

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANA MCQUEEN, CHRISTIAN
MCQUEEN, COURTNEY MCQUEEN, and
JAMES MCQUEEN, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES MCQUEEN,

Respondent-Appellant,

and

JULIE MCQUEEN,

Respondent.

UNPUBLISHED

March 25, 2004

No. 251526

Kent Circuit Court

Family Division

LC No. 03-000006-NA

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating his parental rights to his biological children Christian McQueen, Courtney McQueen, and James McQueen.¹ We affirm.

I. FACTS

Respondent was convicted of three counts of criminal sexual conduct in the first degree, MCL 750.520b, and one count of criminal sexual conduct in the second degree, MCL 750.520c, based on allegations by his stepdaughter that he committed digital and anal penetration on her over the course of several years. Family Independence Agency (FIA) filed a petition seeking termination of respondent's parental rights to Christian, Courtney, and James as a result of the allegations involving his stepdaughter.

¹ Respondent had no parental rights to his stepdaughter, Dana McQueen.

The trial court found that clear and convincing evidence existed to terminate respondent's parental rights to Christian, Courtney, and James. The evidence showed that respondent was convicted of sexually abusing a sibling of the children. Respondent was a father figure to his stepdaughter. The abuse occurred in the home over a prolonged period of time. The trial court found that respondent's behavior toward his stepdaughter was indicative of his potential behavior toward his biological children and concluded that termination of respondent's parental rights was in the children's best interests.

II. STANDARD OF REVIEW

We review a trial court's decision to terminate parental rights for clear error. MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). If the trial court determines that the petitioner has proven by clear and convincing evidence the existence of one or more statutory grounds for termination, the court must terminate parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000). We review the trial court's decision regarding the child's best interests for clear error. *Id.*, 356-357.

In reviewing claims of ineffective assistance of counsel in termination cases, we apply by analogy the principles of ineffective assistance of counsel developed in the criminal context. *In re Simon*, 171 Mich App 443, 447; 431 NW2d 71 (1988). To prevail on such a claim, a respondent must show that counsel's performance fell below an objective standard of reasonableness and resulted in prejudice in that but for counsel's error, it is reasonably likely that the result would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001).

III. ANALYSIS

We affirm. The undisputed evidence established the existence of a statutory ground for termination of respondent's parental rights to his biological children, i.e., that he abused his children's sibling and that the abuse included criminal sexual conduct involving penetration. MCL 712A.19b(3)(k)(ii). Evidence produced at the permanent custody hearing established that respondent's children would be at risk if respondent retained parental rights. Evidence of how a person treats one child is indicative of how he may treat other children. *In re Smebak*, 160 Mich App 122, 128; 408 NW2d 117 (1987). The trial court did not clearly err in concluding that the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra*.

The use of an unsuccessful strategy does not mandate a conclusion that counsel was ineffective. *In re CR, supra*, 199. Respondent has not shown that counsel's performance resulted in prejudice in that he has not demonstrated that had counsel pursued a different strategy it is reasonably probable that the result would have been different. *Id.*, 198.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette